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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ALFREDO V. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B179726

(Los Angeles County
Super. Ct. No. CK50267)

ORIGINAL PROCEEDING; petition for extraordinary writ. Lori Schroeder,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ denied.

L. Ernestine Fields for Petitioners.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,
and Pamela S. Landeros, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Alfredo and Zenaida V. petition this court for an extraordinary writ (Cal. Rules of Court, rule 38.1) setting aside the trial court's order setting this case for a permanent plan hearing (Welf & Inst. Code, § 366.26).¹ They contend the juvenile court lacked jurisdiction to set the hearing and, even if the court had jurisdiction to set the hearing, its order doing so was premature. We disagree and deny the writ.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioners are the paternal grandparents of eight-year-old Michael V. On September 28, 2002, while Michael's parents were transferring him for a weekend visit, Michael's father stabbed his mother then stabbed himself. Both parents died of their wounds. Michael witnessed the stabbing, as well as previous domestic violence by his father against his mother.

On October 2, 2002, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300, subdivision (g), alleging Michael had no parent or guardian capable of caring for him. Petitioners appeared and expressed a desire to care for Michael. They also represented that Michael's maternal grandparents, Brigido and Alicia P., who lived in Mexico, agreed to his placement with petitioners. The juvenile court ordered that Michael be placed with petitioners. Petitioners had a home in Palmdale, a stable work history and agreed to allow Michael to visit with his maternal grandparents in Mexico.

At the October 23, 2002 jurisdictional hearing, Michael's maternal uncle, Marciano V., challenged Michael's placement with petitioners. A social worker contacted the maternal grandparents in Mexico, who stated that they wanted Michael

¹ Unless otherwise stated, all further section references are to the Welfare and Institutions Code.

placed with them in Mexico. The maternal family blamed petitioners for not doing anything to stop the domestic violence by Michael's father and did not want Michael placed with a family of a murderer.

The court, however, allowed Michael to remain with petitioners, who wanted to adopt him. He stated that he was happy there and did not want to live in Mexico. On December 4, 2002, the juvenile court sustained the section 300 petition. It also ordered an international home study of the maternal grandparents' home in Mexico.

The maternal grandparents filed a petition for modification under Welfare and Institutions Code section 388 on March 14, 2003, requesting that Michael be placed with them in Mexico. In it, they recounted the history of domestic violence between Michael's parents and petitioners' refusal to get involved. In response, DCFS reported that Michael was doing well in his placement with petitioners. Michael wanted petitioners to adopt him. He wanted to visit his maternal grandparents but did not want to move to Mexico with them.

The case was set for both a permanent plan hearing and a hearing on the maternal grandparents' petition on April 8, 2003. At that time, both sets of grandparents appeared and the trial court granted them de facto parent status. The court continued the case to May 13.

The international home study indicated the maternal grandparents lived and worked in Oaxaca, were in good health, and were stable. They communicated with Michael every week by telephone. DCFS reported the maternal grandparents were afraid that Michael would be raised like his father and wanted custody of him for that reason. They were willing to relocate to Los Angeles, if necessary, to gain custody of him.

The juvenile court took the permanent plan hearing off calendar and continued the hearing on the modification petition. It ordered DCFS to evaluate the maternal grandparents for placement and it granted them weekend visitation.

Michael began exhibiting behavioral problems, probably due to divided loyalties between the two sets of grandparents. He spent the summer of 2003 with his maternal

grandparents in Oaxaca. After that, he stated that he wanted to live in Mexico with his maternal grandparents.

The case was referred for a Family Group Decision Making conference. At the September 10, 2003 hearing on the maternal grandparents' section 388 petition, DCFS advised the juvenile court that the parties had agreed that Michael would live with his maternal grandparents in Oceanside, where they were staying with Marciano V. Michael would visit with petitioners twice a month. Petitioners were opposed to having the maternal grandparents adopt Michael, but they were agreeable to legal guardianship. The juvenile court agreed to a legal guardianship. It ordered Michael placed with his maternal grandparents in Oceanside, with visits with petitioners every other weekend. It ordered DCFS to prepare a section 366.26 report addressing legal guardianship. The maternal grandparents withdrew their section 388 petition.

While there were some difficulties in Michael's transition from petitioners' home to the maternal grandparents' home, he eventually adjusted to the change. On December 3, 2003, the juvenile court appointed the maternal grandparents to be his legal guardians. The maternal grandfather returned to Mexico to work. Michael and his maternal grandmother moved to a friend's home, where the grandmother rented a bedroom.

On June 2, 2004, the juvenile court gave the maternal grandparents permission to take Michael to Oaxaca for the summer. It also granted petitioners permission to join them, if possible. After they returned, Michael indicated he wanted to live in Mexico with his maternal grandparents and have petitioners visit him there. The maternal grandparents wanted to adopt him and take him back to Oaxaca permanently.

At a hearing on December 1, 2004, DCFS recommended that the maternal grandparents be allowed to adopt Michael. Petitioners opposed this, requesting that the court maintain the status quo and that a mediation be scheduled, as well as another Family Decision Making conference, before a section 366.26 permanent plan hearing was scheduled. Michael's counsel requested that the court not set a section 366.26 hearing but set a mediation between the two sets of grandparents. While the matter was in

mediation, Michael would grow older and be better able to decide who he wanted to adopt him.

The juvenile court found “good cause to consider whether a more permanent plan might exist for Michael” and set a section 366.26 permanent plan hearing for June 1, 2005. In the meantime, it ordered DCFS to prepare adoptive home studies on both sets of grandparents and ordered mediation and a Family Decision Making conference.

CONTENTIONS

Petitioners contend the juvenile court lacked jurisdiction to set a section 366.26 hearing. They further contend that, even if the court had jurisdiction to set the hearing, because there was no approved adoption home study and there were two sets of grandparents willing to adopt Michael, it was premature and contrary to Michael’s best interests to set the hearing. We disagree with both contentions.

DISCUSSION

In contending that the juvenile court lacked jurisdiction to set a section 366.26 hearing, petitioners rely on *In re Vanessa P.* (1995) 38 Cal.App.4th 1763. In *Vanessa P.*, an aunt was seeking custody of an orphaned child. The aunt attempted to petition the probate court for guardianship or adoption of the child, but the probate court deferred to the juvenile court, in which dependency proceedings were pending. (At p. 1767.) The juvenile court found the aunt lacked standing to participate in the dependency proceedings and ordered the child placed for adoption. (*Id.* at pp. 1766, 1768.) On appeal, the aunt claimed the juvenile court should have terminated the dependency proceedings and allowed the matter to be heard in the probate court. (*Id.* at p. 1770.)

On appeal, the court agreed that when the child’s parents died, she was left without provision for her support and thus, under section 300, subdivision (g), the juvenile court properly exercised jurisdiction over the child. (*In re Vanessa P.*, *supra*, 38

Cal.App.4th at p. 1771.) The court added that once the child's immediate needs were met, "there was no reason for the juvenile court to continue maintaining jurisdiction. By needlessly maintaining jurisdiction, the juvenile court prevented [the aunt] from having her petition to be appointed guardian or alternatively to adopt Vanessa heard, since, when confronted with such petition, the probate court correctly deferred to the juvenile court." (*Ibid.*)

The court noted that the dependency statutes did not address the situation before the court, where relatives were seeking custody of an orphaned child. (*In re Vanessa P.*, *supra*, 38 Cal.App.4th at p. 1771.) "The broad powers statutorily conferred upon juvenile courts to declare a minor a dependent and continue to exercise jurisdiction of a minor, to the exclusion of the superior court (§ 300 et seq.), demonstrate that the juvenile court should have withdrawn from this matter earlier. There is no reason to determine whether parental rights should be terminated when the minor's parents are deceased and relatives are willing to accept responsibility for the orphan. The superior court should determine who should adopt or be appointed guardian of Vanessa and the juvenile court should confine itself to making temporary custody orders. Probate Code section 1514 requires issues of custody of the minor to be determined pursuant to the provisions in the Family Law Code. In cases involving the custody of an orphaned child, the matter is properly decided in the superior court, rather than juvenile court, pursuant to the statutory scheme enacted to govern adoptions (Fam. Code, § 8600 et seq.), or the appointment of a guardian (Prob. Code, § 1514)." (*In re Vanessa P.*, *supra*, 38 Cal.App.4th at p. 1771.)

Neither Family Code section 8600 nor Probate Code section 1514 divests the juvenile court of jurisdiction over an orphaned child over whom it properly has exercised jurisdiction under section 300.² *Vanessa P.* itself does not hold that the juvenile court at some point lost jurisdiction over the child, only that the juvenile court should not have

² Family Code section 8600 provides: "An unmarried minor may be adopted by an adult as provided in this part." Probate Code section 1514 provides that, "[u]pon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both." (Subd. (a).)

maintained jurisdiction under the circumstances. Absent any authority to the contrary, we hold that once the juvenile court properly exercised jurisdiction over Michael, it did not lose that jurisdiction.

Here, in contrast to the situation in *Vanessa P.*, petitioners were given standing in the juvenile court proceedings and they initially were given custody over Michael by the juvenile court. They acquiesced in the juvenile court proceedings and they never protested the juvenile court's continued exercise of jurisdiction over Michael and did not request that the matter be transferred to the superior court. Under these circumstances, we conclude that petitioners forfeited the right to complain of the juvenile court's continued exercise of jurisdiction over Michael. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 and fn. 2.)

Petitioners further contend that, even if the juvenile court had jurisdiction over Michael, its setting of the section 366.26 permanent plan hearing was premature, in that there was no approved adoption home study and there were two appropriate sets of grandparents willing to adopt Michael. In support of this contention, they cite *In re Crutcher* (1923) 61 Cal.App. 481, 484. We fail to see any relevance in this citation, in that *Crutcher* addresses the code section requiring parental consent to adoption and why that section obviously does not apply where the parents are deceased.

At the section 366.26 hearing, the question is whether the child is adoptable. It is not necessary that there be a prospective adoptive family identified. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649; *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223, fn. 11.) This being the case, we fail to see why the lack of an approved adoption home study and the availability of two sets of grandparents willing to adopt the child would preclude the juvenile court from setting a hearing. Rather, the circumstances suggest the juvenile court should set a section 366.26 hearing and make a permanent plan for Michael. (Cf. *In re Marilyn H.* (1993) 5 Cal.4th 295, 306-307.)

The petition for extraordinary writ is denied.

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SPENCER, P.J.

We concur:

MALLANO, J.

SUZUKAWA, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.